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Entitled

Right to religion vis a vis Gender Justice in India – Constitutional Perspectives

Submitted by

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Right to Religion *vis a vis* Gender Justice in India – Constitutional Perspectives

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"Women is the Skilled Architect of the Society,"

Introduction –

India is a country with diverse religions. India has mainly four religions Buddhism, Christianity, Hinduism, and Islam. It is accepted that religion is a matter of faith and does not define religion as it touches the conscience of the individual. This means that every religion teaches the lessons of conduct through the scriptures. People of every religion follow the rules prescribed in the scriptures of the religion for example Hinduism is according to the four Vedas, Buddhism is according to the Tripitak a, Christianity is according to the Bible, and Islam is according to the Sharia and Koran. Menand women of every religion have an important status in every religion.

The status of women in various religions in India has been fluctuating. It has gone through several changes during various historical stages. Historically speaking, women in India have passed through two phases of their life – the period of subjugation and the period of liberation. At times she has been suppressed and oppressed and at the same time, she is regarded as the deity of the home. From the Vedic age till today, her status and position have been changing with time.

Ancient period-

In the Vedic period, women had a significant contribution towards the implementation of household responsibilities, health care of the elder person & child

development if any women wanted to get an education, they were permitted the opportunity to attain high intellectual and spiritual standards. In these periods there were many women rishis, the Vedic period has witnessed many women scholars. They possessed adequate knowledge regarding the Vedas and texts. The Vedic period witnessed many capable scholars like Apala and Ghosha, performing their duties of composing mantra. Lopamudra is one of the female teachers in these periods. Overall, in the Vedic period status of women was high and respectful. In the later Vedic period women's status declined. Primarily discrimination started in terms of education and other facilities and right but the position of women further declined with the prevalence of child marriage, Sati, polygamy, and the purdah system.

In the Mauryan period, women's status further deteriorated and the King of Mauryan appointed famine bodyguard. Due to this upper-class women started adopting purdah system. During the Gupta period, women started to decline their status. In this period Manu directed his own rule and as per his rule, women are dependent upon father, husband, and son. Apart from the practice of Sati, polygamy & child marriage, there were further other practices devadasis and prostitution was also prevalent.

Medieval period-

The status of women began to decline during the medieval period. Medieval India was not women's age; it is supposed to be the 'dark age' for them. When foreign conquerors like Muslims invaded India, they brought with them their own culture. For them, women were the sole property of her father, brother, or husband and they did not have any will of their own. During the Middle Ages, the term "Stridhana" acquired huge dimensions. The Hindus and Muslims favored this custom of dowry. This in a way contributed to female infanticide, as it became a heavy burden on the poor. The birth of girls came to be seen as a misfortune by the majority of the population.

The condition of the Hindu widows became more miserable during the medieval period. The rigidity of the caste system denied them the right to freedom and social mobility. A widow was secluded from society and was devoid of any worldly pleasure. The condition of the Muslim widow was slightly better since she could marry after a certain lapse of time following her husband's death

Purdah system

Women began to wear 'Purdah' (a veil) to hide their bodies. As a result, their independence was also compromised. They were denied freedom of movement, which resulted in further degradation of their status. These issues involving women led to a shift in the public's mentality. People or society at large looked upon girls as a source of suffering and a burden that must be protected from intruders and given special attention. A male kid, on the other hand, did not need such much care and instead serve as a useful earning hand. As a result, a vicious spiral developed, with women bearing the brunt. All of this resulted in the emergence of many new evils, including Child Marriage, Sati, Jauhar, and restrictions on female education. [1]

Child marriage

It was a norm in medieval India that girls were married off at an early age. They were not allowed access to education and were treated as material beings. The plight of women can be imagined by one of the shlokas of Tulsidas where he writes *"Dhol, Gawar, Shudra, Pashu, Nari, ye sab dand ke adhikari"*. Animals, illiterates, people from lower classes, and women should all be beaten. Child marriage along with it brought some more problems such as increased birth rate, poor health of women due to repeated childbearing, and mortality rate of women and children increased. At this age, girls were required to take education which is regarded as one of the major problems with the course of progressive women.[2]

"**Sati**" - Sati was prevalent in the Hindu religion Sati means the practice of burning the widows alive on the funeral pyre of their husband. According to certain Hindu texts, women who die at their husband's funeral pyre go directly to paradise, hence it's a good idea to follow this rite. Women were not required to do so at first, but if they did, they were seen as highly esteemed members of society. Sati was seen to be a better alternative than being a widow since the lives of widows in Hindu culture were worst. Some texts, like 'Medhatiti,' have opposing viewpoints, stating that Sati is equivalent to suicide and should be avoided.

"Jauhar" - Jauhar was the Hindu practice of mass self-immolation of women and these customs are followed in northwest regions of India. It's comparable to Sati in some ways, except its mass suicide. Wives immolated themselves while their

[1]Status of women in the Medieval India: | TriumphIAS
[2]Status of women in the Medieval India: | Triumph IAS

husbands were still alive under these customs. When the Rajput clan realised they were about to die at the hands of their opponent, all of the ladies built a great pyre and lit themselves on fire, while their husband fought the last decisive battle with the enemy. As a result, the women's and the clan's holiness is preserved.

Devadasis.

Devadasis was a custom prevalent in Southern India and also in Maharashtra. Girls were devoted to temples in the name of gods and goddesses under this system. The females were then dubbed "Devadasis" or "Jogini," which means "servant of God" but became People's servants in a roundabout way. These Devadasis were intended to live a life of celibacy. Under the Devadasi system, women were the brides of gods. But they were supposed to entertain kings, priests, and even members of the upper classes.

India has also seen heroic women such as Chandbibi, Jija Bai, Tara Bai, Ahalya Bai Holkar, and so on. During the medieval period, the social life of women underwent great changes. The dependence of women on their husbands or other male relatives was a prominent feature of this period.

Modern period –

During this period many efforts were made to improve the condition of women. The laws were enacted to eradicate malpractices regarding women in society. These flaws were addressed by Justice Ranade's Indian National Conference, which was founded in 1885. Raja Ram Mohan Roy, who was instrumental in the abolition of the Sati system, spoke out against child marriage and fought for women's right to inheritance. Ishwar Chandra Vidyasagar started a campaign for widows' right to remarry and advocated for women's education. Maharaja S. Rao, the king of Baroda State, campaigned to end child marriages and polygamy, as well as to provide women the right to education and widows the opportunity to remarry.

Swami Vivekananda, Annie Besant, Mahatma Gandhi, Swami Dayanand Saraswati,Mahatma Phule, Savitribai Phule, Gopal Ganesh Agarkar, Tarabai Shinde, Pandita Ramabai, Kashibai Kanetkar, Dhondo Keshav Karvetook an effort to uplift the social, economic, and political rights of the women.

Independent India -

After India became independent, the Indian parliament made a special provision in the Constitution about women's rights. The Constitution gives fundamental rights to women as well as every citizen.

Article 14 - Equality before law-

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 - In this, the State shall not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth, or any of them.

Article25 –Freedom of conscience and free profession, practice, and propagation ofreligion.[1]

India has adopted the secularism principle in its Constitution. Secularism means developing, understanding, and respect for different religions. No religion is superior and all are equal. All religions are protected under the Indian constitution.

Indian constitution perspective –

Various legislations have been passed in India to curb the imbalance on a gender basis and aid in women's empowerment. Under the Constitution, the principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles.

Indian Constitution provides the right to religion under Art- 25 to 28 & Constitution plays an important role to protect religion. Art- 25 & 26 are not limited to matters of doctrine of belief. It extends also to acts done in pursuance of religion & therefore contains a guarantee for rituals and their observances, ceremonies, and modes of worship which are an integral part of religion. What constitutes an essential part of religious practice is decided by the court concerning a particular religion and includes practices which are regarded by the community as a part of its religion.

Concept of religion and secularism –

Religion is one of the most important social institutions. Religion refers to the most sublime of human aspirations. It is a part of human social life. Religion is a system of belief in the existence of a supernatural being. There should not be

hesitation in regarding India as a secular State. The essential element of secularism is that the State is not the medium of interaction between men and God. A secular state does not deny the existence of God.

Constitutional provisions in the protection of religion –

Indian Constitution provides the right to religion under Art- 25 to 28 & Constitution plays an important role to protect religion. Art- 25 & 26 are not limited to matters of doctrine of belief. It extends also to acts done in pursuance of religion & therefore contain a guarantee for rituals and observances, ceremonies, and modes of worship which are an integral part of religion[3]. What constitutes an essential part of religious practice has been decided by the court concerning a particular religion and includes practices which are regarded by the community as a part of its religion.

Case Law –

State of Bombay v/s Varasu Bamil –

An act that prohibited bigamy was held valid under clause (b) polygamy is not an essential part of the Hindu religion. Therefore can be regulated by law Under such rule prohibited some system such as Sati or devdasi,

Sabrimala Temple Entry case

Indian Young Lawyers Association v/s State of Kerala.

September 28th, 2018, the Supreme Court delivered its verdict in these cases. A 4:1 majority held that the temple's practice of excluding women is unconstitutional. It held that the practice violated the fundamental right to freedom of religion.

Yasmeen Zuber Ahmad Peerzade v Union of India

The Supreme Court held that Muslim women be allowed to enter mosques across the country claiming that such restrictions were "unconstitutional" and violative of the right to equality and gender justice.

Hijab case- Fathima Thasneem v/s State of Kerala.

The Karnataka High Court upheld the ban on hijab by the educational institutes on15, March, 2022.The court ruled that hijab is not an essential religious

[3]M. P. Jain. Indian Constitutional Law.

practice under Islam and, hence, is not protected by Article 25 of the constitution setting out the fundamental right to practice one's religion.

Apart from the provisions in the constitution, certain other legislations were passed specifically to certain issues. The Dowry Prohibition Act 1961, The protection of women from domestic violence Act 2005, The Prenatal Diagnostic Techniques (Regulation & prevention) Act 1994, The Hindu widow Re-marriage Act 1956, The Hindu Succession Act 1956.All the provisions that have been included in the Constitution and other enactments are reflective aim of gender justice but the implementation of all these provisions have been challenging. Thus, despite the measures formulated for curbing the gender imbalance, in practice though, women continued to face the same complexities. As per the latest Census, the sex ratio in India is 927 females to every 1000 males and this has seen declining for the last four decades. This is a significant indication of the appalling condition of the women in the country. The sex crimes in the country have reasonably increased over the years. Patriarchy, lack of awareness, continuous subjugation, certain deep-rooted traditions and custom, male chauvinism, lack of effective enforcement, have altogether resulted in the suppressed condition of women today.

Gender inequality in various religious personal law in India-

Under all personal laws, regardless of religion, women are not equal to men. Therefore, they discriminate against women in marriage, inheritance, and custody of children. Thirty-two years ago, when Shahnaz Sheikh filed a Public Interest Litigation (PIL) challenging the triple divorce granted by her husband in the mid-night, litigation got the color of identity politics. The petition stated that Sharia law veils Muslim women allows polygamy and unilateral divorce, and deprives divorced Muslim women of their upbringing rights.

Hindu girls were deprived of joint inheritance rights in their parents' property, according to the Mitakshara Code, a school of Hindu law governed by inheritance rights. Hindu girls were given equal rights to an ancestral property only after Lata Mittal (case filed in 1985) won a 20-year legal battle in the Supreme Court.

Christian women could not obtain a divorce on the grounds of adultery committed by the husband; it had to be coupled with cruelty, bestiality, and sodomy. On the other hand, Christian husbands could simply declare their wives as

adulteresses and divorce them. These antiquated laws were enacted in the colonial period to serve the interests of the British bureaucrats who had their legally wedded wives in England and were cohabiting with a local. Due to pressure from Christian women, the government cleared a proposal to amend the antiquated Christian Divorce Act 1869.

Parsi daughters who married non-Parsi men lost their property rights and non-Parsi wives of Parsi husbands were entitled to only half of the husband's property as per the Parsi personal law.

Statement of Problem: -

The women follow some customs which are existing in various religions. These customs are not legally binding on women, but women are so entangled in the customs and traditions imposed by their religion that they forget their legal rights and follow such customs and traditions. i.e.

- A Widow's re-marriage Act was passed in India, but till today we see many widows in society without re-marriage. The widows are not permitted to participate in some pious events or programs or any marriage ceremonies. The Dowry Prohibition Act was passed in 1961, but many cases are still reported due to a lack of effective implementation of the Act. The dowry custom is prevalent even today. The marriage age difference between a male and a female must be equal. The women are not allowed entry in some temples &the society restricted women for offering prayers & 'worship' in some temples. The women are not allowed to perform the funeral of their parents even today. The women are not appointed pujari in the temple. Muslim women are not allowed to enter in dargah & mosque. The women are required to cover their face and body in Hindu religion from pardhanishin women or ghungut and in Muslim women burqa or hijab. The women have changed their lifestyle after marriage. Such as changing her dressing style, wearing compulsorily ornaments like "manglsutra" for Hindu women and Gulsar for Muslim women. Also, women are wearing kangan or bangles,etc.

Every religion has some unwritten and unconstitutional rules and it does not matter how much progress has been made by the people of the country today. The impact of such a rule is still visible on the people of the society.

Aim and Objects

1. To explore the status of women from a historical perspective
2. To study issues and challenges to protect the status and rights of women
3. To study gender justice and the right to religion in the constitution.
4. To study gender justice in various personal laws and its strict implementation.
5. To study the need for the uniform civil code in present society.
6. To study the need of legislative provision under personal law
7. To study present trends in the Indian judiciary related to gender and religion.
8. To give recommendations and suggestions in religious institutions to promote gender equality and empowerment of women.

Significance of the Study:

The present research is useful in destroying the malpractices and erroneous traditions for women of different religions. It shall help to abolish gender discrimination under the guise of custom and tradition. It shall help to eradicate evil practices in society and protect the legal rights of women. It is helpful for women who are directly or indirectly implicated in in-equality customs and traditions. This research can help women who are not aware of their rights or do not know enough about them, and it will be useful for creating awareness among women in different communities about their constitutional rights.

Area of research: -

The present research work aims to study personal laws of various religions pertaining to family matters, Constitutional provisions relevant to the right to religion. The Present research works aim to study the human rights perspective of religion and women too. The researcher would also study penal provisions under the Indian Penal Code. -1960, Criminal Procedure Code. -1973, Domestic Violence Act,2005, Evidence Act,1872. The research work would also focus on laws relating to the property concerning women such as the Transfer of Property Act, 1882.

Review of Literature: -

The researcher has accessed **Anna haribhau salukhe's book, - "Hindu culture and women. Publisher name– *Lokanamay grah.* -**In this book, the author

has described the history of women in the Vedic period by studying the culture of different religions and women in depth. This book gives a detailed account of how the position and status of women in society have changed since time immemorial. When the researcher read this book, he found that gender inequality has existed in every religion since ancient times.

Tarabai Shinde's book "Comparison between Women and Men"

Publisher name – OUP India. -Tarabai Shinde the first voice of Indian feminism, published a short 37-page book in 1882that deals with the unjust culture of gender discrimination This book not only exposes the duplicity of the so-called cultists but does not even look forward to treating their Devadas on occasion. This book is a must be read because it will show where we stand today compared to that time. And it is possible to re-examine exactly where and what needs to be changed.

Law, religion, and gender equality literature on the Indian personal law system from a women's right perspective. - Article author – Tanaja Herklotz.

-In this article author has explained in detail that the Indian family law system isproblematic from a women's rights perspective and how can these aspects be addressed and reformed? This article deals with reformist measures for feminism, attitudes, family law, jurisprudence, discrimination.

Women and Human Rights. – S. K. Pachauri A.P.H. Publishing Corporation, New Delhi. - In this book author said that the women care for her own and other family members. Women perform their duties carefully. She is considered the creator, protector, and educator of her children.

Handbook On women and Human Rights (2001), -Siddiqui Fatima, Rangnathan Sarala, Kanishka, Publisher, New Delhi. -In this book, the author discusses the status of women from a national perspective and also describes the fields of women's empowerment, voluntarism, and subordination.

The researcher has read the said book which comprises a detailed discussion on the right of women under various religions and how religion impacts human rights. The researcher read the book and learned about women's rights in different religions and how religion affects human rights.

Law & Social Transformation in India - Malik & Raval Publisher name-Allahabad Law Agency. - In this book, the author describes in detail gender justice and gender inequality. -In this book, the author explains in detail gender justice,

religion, children, women's law, and gender inequality.

Women Rights Access to Justice. – P. O. Kaushik. Publication- Book well in collaboration with Rajiv Gandhi institute for Contemporary Justice. -In this book, the author describes the condition of women or the status of women in different religions from ancient times to modern times. -In this book, the author has studied in detail the status of women in different periods and outlines national policy.

Law and Social Transformation. - Dr, G. P. Tripathi. Publishing- Central law publications. – The author has gone into great detail in this book**.** Human law in its social context and laws on justice, liberty, religion, and women's law is described.

Religious Freedom and SecularismTheory and practice. – N. Suda Rohan. Publishing, - The iefai University Press. – The author has looked at this book in great detail. In it, the author has studied what religion is, secularism, and freedom at the national and international levels.

Hypothesis:

1) The legal rights of women are dominated by the rules of religion.
2) All personal laws from different religions discriminate against women on a gender basis.
3) The Constitutional rights and the legal rights of women are not strictly enforced.
4) Uniform Civil Code will maintain Gender justice and equality among women.
5) Most of the women are under the influence of religion.

Research Methodology: -

In methodology, there are two types of methodology Doctrinal &Non-Doctrinal. The researcher has adopted a doctrinal research methodology for conducting the present research. In doctrinal research, data will be collected from secondary sources. The researcher collected the data from Government & Semi –

government publications, books and journals, Commentaries, research articles, the internet, newspapers,

Scope of Limitation:--Present Research work is limited to personal laws in India

Chapters

The tentative chapters' scheme is as follows. The proposed research work is divided into seven Chapters.

Chapter – I

Introduction

Chapter – II

Status of women: Historical perspectives.

Chapter – III

Gender Justice & Right to Religion- Constitutional perspectives.

Chapter – IV

Gender Justice and Personal Law- Legislative Regime

Chapter – V

Right to Religion *vis a vis* Gender justice- Issues and Challenges.

Chapter – VI

Gender and Religion Recent Trends in Indian Judiciary

Chapter – VII

Conclusion &Suggestions

Bibliography

1. Hindu Culture & Women–Anna Haribhau Salunkhe (Author) Pbulisher – Lokangamy grah.
2. Indian Constitutional Law - M. P. Jain.(Author)
3. Indian Constitutional Law. – M. P. Jain (Author)
4. Law & Social Transformation in India - Malik & Raval Publisher name- Allahabad Law Agency.
5. Women Rights Access to Justice. – P.O. Kaushik. Publication-Book well in collaboration with Rajiv Gandhi institute for Contemporary Justice.
6. Indian Constitutional Law. – Prof, G.C.V. Subba Rao. Publishing-S. Gogia &Company.
7. Dimensions of Gender Problems. –Deepak Bishoyi. Publishing Discovery Publishing House.
8. Law and Social Transformation. -Dr, G.P. Tripathi. Publishing-Central law publications.
9. Religious Freedom and Secularism Theory and practice. – N.Suda Rohan. Publishing, -The iefai University Press.
10. Women and Human Rights.– S.K. Pachauri A.P.H. Publishing Corporation, New delhi.
11. Comparison between Women &Men - Tarabai Shinde (Author) Publisher name – OUP India
12. Equality, freedom, and religion. - ROGER TRIGG (Author)
13. Religion, Secular Beliefs, and Human Rights. – Natan Lerner.(Author) Publisher by – MARTINUS NIJHOFF
14. Religion, Human Rights and International Law. -Javaid Rehmanand Susan c. Breau. (Author) Publisher by – MARTINUS NIJHOFF
15. Law, religion and gender equality: literature on the Indian personal law system from a women's rights perspective. –Tanaja Herklotz.
16. Women and Law -Batra Manjula , Allahabad Law Agency, Allahabad.

17. Law Relating to Women and Children (2003) Kant Anjani Central Law Publication, Allahabad.
18. Women and Rights (access to justice 22007) Kaushik P. D. Bock well Publication, New Delhi.
19. Women and Social Changes (2011) Shans Shamshuddin Ashish Publishing House, New Delhi.
20. Women and Human Rights in India. (2001) Poonia Meenakshi and poonia Virendra S Sonali Publications, New Delhi,
21. Indian - Women through the Ages, (1989) Ghosh -S. K. Ashish Publishing House, New Delhi.
22. Women and Human Rights (1999), Pachauri S.K. A.P.H. Publishing Corporation, New Delhi.
23. Handbook On women and Human Rights (2001), Siddiqui Fatima, Rangnathan Sarala Kanishka Publisher, New Delhi.
24. Women's P o l i t i c a l Participation in India (2011) Saxena k. S -Publication, Jaipur.
25. –Human Rights(1999) – Chandra V- Allahabad Law Agency, Allahabad
26. – Human Rights (2012) Myneni S R Ashiya Law House, Hyderabad.

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